

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE KOPPEL PHOTO ENGRAVING COMPANY, INC.

and

Case 22--CA--13100

LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF
OF AMERICA a/w INTERNATIONAL TYPOGRAPHICAL
UNION, AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 7 March 1984, the General Counsel of the National Labor Relations Board issued a complaint 23 March 1984 and an Erratum 28 March 1984 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 21 February 1984, following a Board election in Case 22--RC--9116, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "'record'" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB 343 (1982).) The complaint further alleges that since 28 February 1984 the Company has refused to bargain with the Union. On 3 April 1984 the Company filed its answer, and on 12 April 1984 its amended answer, admitting in part and denying in part the allegations in the complaint and raising an affirmative defense.

On 9 May 1984 the General Counsel filed a Motion for Summary Judgment. On 11 May 1984 the Board issued an order transferring the proceeding to the Board

and a Notice to Show Cause why the motion should not be granted. The Company filed no response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Company's answer, as amended, admits the Union's request and its refusal to bargain, but attacks the validity of the Union's certification by claiming that the bargaining unit is inappropriate. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

The record, including the record in Case 22--RC--9116, reveals that on 13 January 1984 the Acting Regional Director for Region 22 issued a Decision and Direction of Election, directing an election in the appropriate unit described below. On 26 January 1984 the Company filed a request for review of the decision, which was denied by the Board in Washington on 10 February 1984. An election was conducted 10 February 1984, and the tally of ballots shows that, of approximately 24 eligible voters, 16 cast valid ballots for and 6 against the Union; there were 2 challenged ballots, an insufficient number to affect the results of the election. The Union was certified as the exclusive bargaining representative of the employees in the appropriate unit 21 February 1984.

By letters dated 14, 15, and 27 February 1984, the Union requested the Company to bargain and to furnish it certain information about the terms and conditions of employment of the employees in the appropriate unit.¹ By letter dated 28 February, the Company acknowledged receipt of the bargaining demand and stated that it "respectfully refuses to bargain with Local One."

¹ Only the 27 February 1984 request occurred after the Union had been certified.

It is well settled that, in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. There are no factual issues regarding the Union's request to bargain and to supply information because the Company, by its letter of 28 February 1984, admitted that it refused to bargain. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a New Jersey corporation, engages in printing services at its facility in Hawthorne, New Jersey, where in the 12-month period ending 21 March 1984 it purchased and received products, goods, and materials valued over \$50,000 directly from outside the State. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held 10 February 1984, the Union was certified 21 February 1984 as the collective-bargaining representative of the employees in the following appropriate unit:

All lithographic production employees, including employees in the stripping, separation and press departments employed by the Employer at its Hawthorne, New Jersey facility, but excluding all office clerical employees, employees in the sales, accounting, production, finishing, maintenance and shipping departments, guards and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since 27 February 1984 the Union has requested the Company to bargain,² and since 28 February 1984 the Company has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after 28 February 1984 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

² See fn. 1, above.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement as well as to provide the Union, on request, information necessary for collective bargaining.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, The Koppel Photo Engraving Company, Inc., Hawthorne, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local One, Amalgamated Lithographers of America a/w International Typographical Union, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement, and provide the Union, on request, information necessary for collective bargaining:

All lithographic production employees, including employees in the stripping, separation and press departments employed by the Employer at its Hawthorne, New Jersey facility, but excluding all office clerical employees, employees in the sales, accounting, production, finishing, maintenance and shipping departments, guards and supervisors as defined in the Act, and all other employees.

(b) Post at its facility in Hawthorne, New Jersey, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

25 July 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local One, Amalgamated Lithographers of America, a/w International Typographical Union, AFL--CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All lithographic production employees, including employees in the stripping, separation and press departments employed by the Employer at its Hawthorne, New Jersey facility, but excluding all office clerical employees, employees in the sales, accounting, production, finishing, maintenance and shipping departments, guards and supervisors as defined in the Act, and all other employees.

WE WILL, on request, furnish the Union, as it requested in its 27 February 1984 letter, the information that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the bargaining unit.

THE KOPPEL PHOTO ENGRAVING
COMPANY, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Peter D. Rodino Jr. Federal Building, Room 1600, 970 Broad Street, Newark, New Jersey 07102, Telephone 201--645--3652.